

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

URBANA VÁZQUEZ,

Plaintiff,

v.

PERSHING, LLC, et al.,

Defendants.

Civil No. 09-2137 (JAF)

OPINION AND ORDER

Plaintiff, Urbana Vázquez, brings the present action against Defendants, Pershing, LLC (“Pershing”); Santander Securities Corp. (“Santander”); and various unknown parties, alleging violations of the Consumer Credit Protection Act, 15 U.S.C. §§ 1601–1693r; the Fair Credit Billing Act, 15 U.S.C. §§ 1666–1666j; and Article 1802 of the Puerto Rico Civil Code, 31 L.P.R.A. § 5141 (1990). (Docket No. 1.) Defendants Santander and Pershing (“Movants”) move to compel arbitration under Plaintiff’s contractual obligations and to dismiss under Federal Rule of Civil Procedure 12(b)(1) and (b)(6). (Docket No. 16.) Plaintiff opposes. (Docket No. 22.) Movants reply in support of the motion to dismiss. (Docket No. 25.)

I.

Factual and Procedural Synopsis

In April 2000, Plaintiff opened a brokerage account managed by Movants. Account applications by Plaintiff for both Santander and Pershing contained broadly-worded arbitration clauses. (Docket Nos. 16-2; -3.) Plaintiff alleges that, at some point, a third party opened

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1 various credit-card accounts under her name and without her authorization. Movants then
2 authorized debits from Plaintiff's account to be paid out to the various fraudulent accounts that
3 had been created. Plaintiff alleges that Movants failed to verify the credit-card account holder
4 requesting payment in her name, resulting in over \$54,000 in unauthorized debits from her
5 account.

6 II.

7 Standard for Motion to Compel Arbitration

8 The Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1–16, governs the enforcement of
9 most arbitration agreements by federal courts and embodies a federal policy strongly favoring
10 the enforcement of arbitration agreements. See, e.g., Campbell v. Gen. Dynamics Gov't Sys.
11 Corp., 407 F.3d 546, 551–52 (1st Cir. 2005) (discussing federal policy). In granting a motion
12 to compel arbitration, we must determine that an arbitration agreement exists; that the claims
13 before us fall within the scope of said agreement; and that the movant has not waived its arbitral
14 rights. See Combined Energies v. CCI, Inc., 514 F.3d 168, 171 (1st Cir. 2008). "[A]ny doubts
15 concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the
16 problem at hand is the construction of the contract language itself, or an allegation of waiver,
17 delay or a like defense to arbitrability." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,
18 460 U.S. 1, 24–25 (1983); see also Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr.
19 Univ., 489 U.S. 468, 475–76 (1989) ("[D]ue regard must be given to the federal policy favoring
20 arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of
21 arbitration.").

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1 Plaintiff concedes that her arbitration agreement with Pershing “clearly deals with
2 debits,” but argues that it excludes the fraudulent, unauthorized debits at issue here. (Docket
3 No. 22 at 3.) As with Santander, Pershing’s arbitration clause is broadly worded: “It is agreed
4 that any controversy between or among the account holder, Pershing, and introducing financial
5 institution or any of them arising out of Pershing’s or the introducing Financial Institution’s
6 business or this agreement shall be submitted to arbitration” (Docket No. 16-3 at 9.) The
7 Supreme Court has repeatedly held that we must enforce arbitration clauses “unless it may be
8 said with positive assurance that the arbitration clause is not susceptible of an interpretation that
9 covers the asserted dispute.” AT&T Techs., Inc. v. Commc’ns Workers, 475 U.S. 643, 650
10 (1986) (quoting United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582–83
11 (1960)). Given the broad language of the clause, Plaintiff’s contention that this arbitration
12 clause does not cover unauthorized debits to her account by third parties is unavailing.

13 Jurisdiction in this case is premised on federal claims, which we find arbitrable.
14 Therefore, we may dismiss the case, including supplemental claims, against Movants. See
15 Bercovitch, 133 F.3d at 156 n.21. Over 120 days have passed since the filing of this action,
16 during which time Plaintiff has neither identified nor served unknown defendants. Thus, we
17 may also dismiss claims against unknown defendants if Plaintiff fails to show good cause for
18 her delay. See Fed. R. Civ. P. 4(m).

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1 **IV.**

2 **Conclusion**

3 For the reasons stated herein, we hereby **DISMISS** Plaintiff's claims against Movants
4 without prejudice. The matter shall be placed in arbitration, the court retaining jurisdiction to
5 enforce any award. In addition, We **ORDER** Plaintiff to show cause, **on or before June 30,**
6 **2010**, for the failure to identify and serve unknown defendants. Otherwise, the case against said
7 unknown defendants will be dismissed.

8 **IT IS SO ORDERED.**

9 San Juan, Puerto Rico, this 17th day of June, 2010.

10 s/José Antonio Fusté
11 JOSE ANTONIO FUSTE
12 Chief U.S. District Judge